


UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED

SEP 29 2014


CLERK

JEREN HOMES, INC. and JERRY L. J.
MYOTT

Civ. 14- 4148

Plaintiffs,

vs.

COMPLAINT

UNITED FIRE & CASUALTY
COMPANY,

Defendant.

The Plaintiffs, by and through their counsel, Thomas J. Von Wald, for their cause of action against the above named Defendant, state and allege as follows:

THE PARTIES

1. Jeren Homes, Inc. ("Jeren Homes") is a South Dakota corporation with its principal place of business at 26987 Hanson Place, Sioux Falls, South Dakota.
2. At all times relevant hereto, Jerry L. Myott ("Jerry") was a resident of Lincoln County, South Dakota.
3. At all times relevant hereto, Jerry is the sole owner and President of Jeren Homes.
4. Upon information and belief, at all times relevant hereto, Defendant United Fire & Casualty Company ("United Fire") is an entity organized and existing under the laws of a state other than South Dakota with its home office and principal place of business in a state other than South Dakota.

JURISDICTION AND VENUE

5. The Court has subject matter jurisdiction pursuant to 28 USC §1332 (diversity of citizenship) because the Plaintiffs are residents of a different state than the defendant and the amount in controversy exceeds \$75,000.
6. Venue is proper in this federal district pursuant to 28 USC §1391(a) because a substantial part of the events and omissions giving rise to this action occurred in the District of South Dakota.

MATERIAL FACTS

7. On October 10, 2011, United Fire insured a 2003 Ford pickup owned by Jeren Homes under policy number 60401520 ("the Policy").
8. When Jeren Homes purchased the Policy, it bought coverage to help pay any medical bills Jeren Homes' owners or employees might incur if they were involved in an automobile accident while operating the 2003 Ford pickup.
9. When Jeren Homes purchased the policy, it bought underinsured motorists coverage to help pay any damages that Jeren Homes' owners or employees might incur if they were involved in an automobile accident, while operating the 2003 Ford pickup, caused by a third party and the third party did not have sufficient insurance or assets to pay the entire amount of damages incurred.
10. As the sole owner of Jeren Homes, Jerryl was a direct beneficiary of the Policy.
11. The Policy provided for up to \$5000 for medical expenses incurred as a result of an automobile accident involving the 2003 Ford pickup.
12. The Policy provided for up to \$1,000,000 in underinsured motorist benefits arising from an accident involving the 2003 Ford pickup.
13. Jeren Homes had paid the premiums in full as requested by United Fire and the Policy was in full force and effect on October 10, 2011.
14. On October 10, 2011 at approximately 1:32 p.m., Jerryl was driving the 2003 Ford pickup insured by United Fire at approximately.
15. On October 10, 2011 at 1:32 p.m., Jerryl was stopped at a stop sign at the intersection of Ellis Road and 26th Street in Sioux Falls, South Dakota facing south.
16. While stopped at that intersection, Jerryl's vehicle was struck from behind by a vehicle driven by Albert Jeffery ("the Accident").
17. As a result of the Accident, Jerryl received severe injuries to his body, which necessitated a spinal fusion surgery.
18. As a result of the Accident, Jerryl has permanent injuries and is in need of ongoing medical treatment.
19. As a result of the Accident, Albert Jeffery was cited for careless driving.
20. Jerryl has made a claim for damages against Albert Jeffery and recovered Mr. Jeffery's insurance policy limits.

21. However, Mr. Jeffery's insurance policy limits were insufficient to pay for all of Jerryl's damages incurred in the Accident and Mr. Jeffery has insufficient assets to pay for such damages.
22. Jerryl timely put United Fire on notice that he would be making an underinsured motorist claim against the Policy as the owner of Jeren Homes.
23. United Fire has paid Jerryl the amount of \$5,000 pursuant to the medical expenses coverage under the Policy.
24. Jerryl has requested payment for all of his damages as a result of the Accident pursuant to the underinsured motorist coverage in the Policy.
25. United Fire has refused to pay the full amount of Jerryl's incurred damages as a result of the Accident

COUNT 1
BREACH OF CONTRACT

26. Jeren Homes and Jerryl reallege the preceding paragraphs as it set forth fully herein.
27. United Fire agreed to pay the full amount of Jerryl's damages incurred by the Accident pursuant to the underinsured motorist coverage in the Policy.
28. Jerryl has requested that United Fire pay the full amount of his damages.
29. United Fire has failed and refused to pay the full amount of Jerryl's damages pursuant to the Policy.
30. United Fire's failure and refusal to pay the full amount of Jerryl's damages constitutes a breach of contract.
31. As a result of United Fire's breach of contract, Jerryl is entitled to the full amount of his damages incurred in the Accident.
32. United Fire's conduct in failing to pay the full amount Jerryl's damages is vexatious or without reasonable cause, entitling Jeren Homes and/or Jerryl to an award of reasonable attorney fees pursuant to SDCL 58-12-3

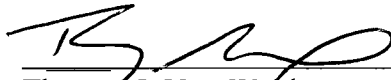
WHEREFORE, Jeren Homes and Jerryl request a judgment against United Fire as follows:

1. For Jerryl's special and general damages;
2. For Jerryl's medical bills, both past and in the future;
3. For attorney fees, costs and disbursements incurred;

4. For prejudgment and post judgment interest; and
5. For any other further relief that the Court determines is just and proper.

PLAINTIFFS DEMAND JURY TRIAL

Dated this 29 day of September, 2014.



Thomas J. Von Wald

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